IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.948 OF 1997

Hindustan Thompson Associates Ltd. ...Petitioners

Versus

Skyline NEPC Ltd. ...Respondents

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Mr.Pankaj Sawant i/b M/s.Rustamji & Ginwala for Petitioners.

Mr.G.R.Kinkhabwala i/b Mulla & Mulla & Craigie Blunt & Caroe for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 9, 2005.

P.C.

1. Heard Counsel for the Petitioners.

2. This Petition is filed under Section 433 and 434 of the Companies Act for directing winding up of the Respondent Company.

3. According to the Petitioners, the Petitioners undertook advertisement services to the

group, of which the Respondent Company forms a part. The advertising services rendered by the Petitioner included rendering assistance and guidance for effective advertising and publicity of the Respondent Company's products in the media. Suffice it to observe that the total outstanding bills payable by the Respondent Company towards the services rendered by the Petitioners as on 31st March 1996, according to the Petitioners, was in the sum of Rs.1,51,25,790/- (Rupees One Crore Fifty-one Lakhs Twenty-five Thousand Seven Hundred Ninety). This position was communicated to the Respondent Company by the Petitioners on May 8, 1996. The communication sent by the Petitioners has been duly acknowledged by the Respondent Company. In fact, under the signature and seal of the Company, the Petitioners have been informed on behalf of the Respondent Company that the balance mentioned in the communication sent by the Petitioners is incorrect. In fact the outstanding balance showed to the credit of the Petitioners was little more, to the extent of Rs.1,52,00,482.98 (Rupees One Crore Fifty-two Lakhs Four Hundred Eighty-two & Paise Ninety-eigth Only) and statement

in support thereof was also enclosed by the Respondent Company.

4. Inspite of acknowledgement of this liability, only part amount was received by the Petitioners. The Petitioners later on, sometime in August 1996, forwarded a statement of outstanding bills as on August 1996, which was to the tune of Rs.1,21,96,489.34 (Rupees One Crore Twenty-one Lakhs Ninety-six Thousand Four Hundred Eighty-nine & Paise Thirty-four Only). This statement has been duly received by the Respondent Company. The endorsement appearing as cancelled by the Respondent Company indicate that the same has been verified and found to be correct by one Mr.A.Rajesh on 19th August 1996. As substantial amount was outstanding and was not being received, Petitioners sent statutory notice on November 20, 1996, calling upon the Respondent Company to pay the outstanding amount of Rs.1,13,51,790.59 (Rupees One Crore Thirteen Lakhs Fifty-one Thousand Seven Hundred Ninety & Paise Fifty-Nine Only) along with interest thereon at the rate of 24% per annum. In reply to the statutory notice, the Respondent Company on

December 23, 1996 has, however, disputed the liability and asserted that the claim of the Petitioners is unjust and dishonest. In Para 6 of the said reply, it is stated that the Respondents had great faith in the accounts produced by the Petitioners and had also confirmed the accounts without verifying the accounts, which are not supported by original bills and supporting documents. This stand is taken to get over the acknowledgment and endorsement appearing in the statement of accounts at Page 45 Exhibit 'L'. There is not even remote suggestion in the reply as sent to the statutory notice that the person (Mr.A.Rajesh), who has made the endorsement, was not the authorised Officer of the Respondent Company.

5. Be that as it may, as the amount was not received, Petitioners filed present Petition under Section 433 and 434 of the Act on 8th October 1997. The Petition was contested by the Respondents and the stand taken on behalf of the Respondents was prima facie found to be incorrect and dishonest, as can be seen from the reasons recorded in the

decision dated 23rd February 1999. Nevertheless, this Court granted opportunity to the Respondent Company to deposit at least the principal amount of Rs.1,13,51,790.59 (Rupees One Crore Thirteen Lakhs Fifty-one Thousand Seven Hundred Ninety & Paise Fifty-nine only) within eight weeks from the date of the order. Even that opportunity has not been availed by the Respondent Company.

6. As the Respondent failed to comply with the conditional order, this Court formally directed admission of the Petition, to be advertised and published on 3rd May 1999. In this backdrop, the present matter has riped for hearing before this Court.

7. After hearing Counsel for the parties and perusing the documents accompanying the Petition and the reply filed by the Respondents, I have no hesitation in taking the view that this is a fit case for allowing the Petition in terms of prayer clauses (a) and (b) of the Petition. This is so, because the fact that the Petitioners have rendered services to the Respondent Company from time to

time is not in dispute. The Respondent Company raised bills for the services so rendered from time to time. The outstanding claim of the Petitioners as on 31st March 1996 was stated to be Rs.1,51,25,790/- (Rupees One Crore Fifty-one Lakhs Twenty-five Thousand Seven Hundred Ninety). This position was communicated to the Respondents vide letter dated May 8, 1996. The Respondents have not disputed that liability. In fact, has conceded that the outstanding amount shown in their books of account to the credit of the Petitioners was Rs.1,52,00,482.98 (Rupees One Crore Fifty-two Lakhs Four Hundred Eighty-two & Paise Ninety-eight). Indeed, thereafter, part payment has been received by the Petitioners. But as of August 1996, the outstanding amount according to the Petitioners was to the extent of Rs.1,21,96,489.34 (Rupees One Crore Twenty-one Lakhs Ninety-six Thousand Four Hundred Eighty-nine & Pasie Thirty-four) and which position was acknowledged and approved at the instance of the Respondents by one Mr.A.Rajesh, as is evident from the endorsement appearing on the statement of outstanding bills Exhibit ‘L’ at page 45.

8. As substantial amount was outstanding, statutory notice was sent, in reply of which, for the first time, the Respondent Company disputed the position reflected in the accounts of the Petitioners. In the reply sent to the statutory notice, it is not even remotely mentioned that the person (Mr.A.Rajesh) who has made endorsement on the statement of accounts Exhibit 'L' was not authorised to do so. That case is made out by the Respondents for the first time in the reply affidavit filed before this Court.

9. The stand taken before this Court to oppose the present Petition is twofold. Firstly that there is dispute with regard to the accounts maintained by the Petitioners. The second objection is that the Respondents cannot be bound by the endorsement appearing in Exhibit 'L' made by Mr.A.Rajesh, as he was not authorised person to do so. In my opinion, both these objections deserve to be only stated to the rejected.

10. The objections are not at all bonafide.

But only ruse to defeat the claim of the Petitioners. The Respondent is not in a position to dispute the acknowledgement appearing on document Exhibit C which is under the signature and seal of the Company dated 19th June 2006, which in fact, concedes the position that the Company was liable to pay sum of Rs.1,52,00,482.98 (Rupees One Crore Fifty-two Lakhs Four Hundred Eighty-two and Paise Ninety-eight) to the Petitioners as on 31st March 2005. The objection now raised on behalf of the Respondents that Mr.A.Rajesh was not authorised person to acknowledge the account, is only an argument of desperation.

11. Be that as it may, it is obvious from the record that the Respondent Company was offered opportunity to pay at least the principal outstanding amount of Rs.1,13,51,790.59 (Rupees One Crore Thirteen Lakhs Fifty-one Thouand Seven Hundred Ninety & Paise Fifty-nine), no payment has been made since February 1999 by the Respondent Company. In other words, the legal presumption arising against the Respondent Company that it is unable to pay its debt has remained unrebutted.

The claim of the Petitioners against the Respondent Company, far exceeds sum of Rs.500/- (Rupees Five Hundred) as is the requirement under Section 433 and 434 of the Companies Act for making order of winding up of the Respondent Company. Besides, I am informed across the bar by the Counsel for the Petitioners, of which, judicial notice can be taken that the Respondent Company has stopped operating flights since long. Initially, the Respondent Company was operating flights in the name of Damani Airways later on in the name of Skyline NEPC Ltd. However, those flights are not operated for quite sometime. In addition, there is another Petition pending before this Court against the Respondent Company being Company Petition No.449 of 1999, in which, claim against the Respondent Company is to the tune of Two Lakh U.S. dollars. Taking any view of the matter, this Petition ought to succeed.

12. In the circumstances, Petition is made absolute in terms of prayer clauses (a) and (b).

A.M.KHANWILKAR, J.